

Montana Water Court
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MONTANA WATER COURT, YELLOWSTONE DIVISION
YELLOWSTONE RIVER ABOVE AND INCLUDING BRIDGER CREEK BASIN
BASIN 43B
PRELIMINARY DECREE

CLAIMANT: Eugene Forster; Heritage Montana LLC

CASE 43B-0898-R-2022

43B 36597-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

Claim 43B 36597-00 appeared in the Preliminary Decree with the following issue remarks:

THE CLAIMED MEANS OF DIVERSION MAY BE INCORRECT AND CANNOT BE CONFIRMED DUE TO LACK OF DATA.

THE CLAIMED SOURCE MAY BE QUESTIONABLE. BASED ON AVAILABLE DATA, THE SOURCE MAY BE SURFACE WATER FROM GREYCLIFF CREEK.

The issue remarks were not addressed through the objection process. The Water Court is required to resolve the issue raised by an issue remark. Section 85-2-248, MCA. Under Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark and the Court can provide the claimants an opportunity to file additional information or evidence.

The December 8, 2022 Order Consolidating Case And Setting Scheduling Conference set a January 11, 2023 scheduling conference. The claimants did not appear. The January 12, 2023 Court Minutes, Order Entering Defaults, and Order Setting Deadlines Pursuant To Section 85-2-248(5), MCA set various deadlines for the claimants and the Bozeman Regional DNRC Office ["DNRC"]. The claimants did not file documentation as directed in this Order. On April 18, 2023 the DNRC Memorandum was filed stating that Daniel Saylor of Heritage Montana LLC contacted the DNRC. The DNRC Memorandum makes recommendations for changes to resolve the issue remarks.

The April 24, 2023 Order Setting Filing Deadline Pursuant To Section 85-2-248(9), MCA states:

The DNRC Memorandum was sent to the claimants. The deadline for the claimant to file its documentation to resolve the issue remarks was April 5, 2023. Nothing was filed by the claimants. Therefore, pursuant to section 85-2-248, MCA, it is

ORDERED that the deadline for the claimants to file documentation stating whether they agree or disagree with the amendments recommended in the DNRC Memorandum is **May 22, 2023**. If nothing is filed by this deadline, the Court will conclude the claimants agree with the amendments recommended in the DNRC Memorandum.

Nothing was filed by the claimants. These documents are viewable in the Court's FullCourt Enterprise case management system.

APPLICABLE LAW

"All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section." Section 85-2-248(2), MCA.

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect including for claimants objecting to their own claims. Rule 19, W.R.Adj.R.

FINDINGS OF FACT

1. The Preliminary Decree states that the source is:

Source Name: SPRING, UNNAMED TRIBUTARY OF YELLOWSTONE RIVER

Source Name: UNNAMED TRIBUTARY OF YELLOWSTONE RIVER

SPRINGS ARE HYDROLOGICALLY RELATED TO GREYCLIFF CREEK

SOURCE INCLUDES SEEPAGE

The source should be:

Source Name: SPRING, UNNAMED TRIBUTARY OF YELLOWSTONE RIVER

SOURCE INCLUDES TWO SEPARATE SPRINGS

The source issue remark should be removed as addressed and resolved.

2. The Preliminary Decree states that the means of diversion is DITCH. This should not be changed. The means of diversion issue remark should be removed as addressed and resolved.

3. The Preliminary Decree also includes the following notice remark:

THE TIMELY FILED OBJECTION OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION WAS AMENDED BY AGREEMENT OF THE PARTIES TO INCLUDE SOURCES AND MEANS OF DIVERSION. BECAUSE THIS ELEMENT WAS NOT INCLUDED ON THE OBJECTION LIST, ANY WATER USER WHOSE RIGHTS MAY BE ADVERSELY AFFECTED BY ENFORCEMENT OF THIS CHANGE MAY PETITION THE APPROPRIATE COURT FOR RELIEF OR MAY FILE AN OBJECTION AT THE PRELIMINARY DECREE.

The remark should be removed as having served its notice purpose.

CONCLUSION OF LAW

The DNRC Memorandum is sufficient to resolve the issue remarks without evidentiary hearing. Sections 85-2-248(3) and (11), MCA.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusion of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW

Service Via USPS Mail:

Eugene Forster
9 Greycliff Creek Ln
Greycliff, MT 59033

Heritage Montana LLC
496 Halbert Ln
Waco, TX 76705

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: 43B 36597-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: EUGENE FORSTER
PO BOX 23
GREYCLIFF, MT 59033

HERITAGE MONTANA LLC
496 HALBERT LN
WACO, TX 76705

Priority Date: JUNE 12, 1906

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** 256.00 GPM

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 2 - MODERATELY HIGH

***Maximum Acres:** 15.00

***Source Name:** SPRING, UNNAMED TRIBUTARY OF YELLOWSTONE RIVER

Source Type: SURFACE WATER

SOURCE INCLUDES TWO SEPARATE SPRINGS

***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENESE	21	1S	16E	SWEET GRASS

Period of Diversion: MARCH 15 TO OCTOBER 15

Diversion Means: DITCH

2		NWNWSW	22	1S	16E	SWEET GRASS
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Period of Diversion: MARCH 15 TO OCTOBER 15

Diversion Means: DITCH

Period of Use: MARCH 15 TO OCTOBER 15

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	3.50		NENESE	21	1S	16E	SWEET GRASS
2	2.00		NWNESW	22	1S	16E	SWEET GRASS
3	9.50		N2NWSW	22	1S	16E	SWEET GRASS

Total: 15.00